

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications	)	
and Energy on its own motion, pursuant to G.L. c. 164,	)	
§§ 1E, 76 and 93, into Boston Edison Company, Cambridge)	)	
Electric Light Company and Commonwealth Electric	)	
Company, d/b/a NSTAR Electric's service quality filings,	)	D.T.E. 01-71A
including but not limited to, their service quality filings	)	
submitted in response to Service Quality Standards for	)	
Electric Distribution Companies and Local Gas	)	
Distribution Companies, D.T.E. 99-84	)	

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**REPLY BRIEF OF THE  
ATTORNEY GENERAL AND THE DIVISION OF ENERGY RESOURCES**

Respectfully submitted,

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**REPLY BRIEF OF THE  
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**I. INTRODUCTION**

Pursuant to the briefing schedule established by the Department of Telecommunications and Energy ("Department") in this proceeding, the Attorney General and the Division of Energy Resources ("DOER") submit their Reply Brief ("Joint Reply Brief") in response to the Initial Brief of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric (collectively, "NSTAR" or the "Company"). The Company's contentions in its Initial Brief are unsupported by the record evidence or otherwise lack merit, and so the Attorney General and DOER reaffirm their position that the Department should: (1) assess the maximum statutory service quality penalty of \$22.5 million against Boston Edison Company ("BECo") that is permissible under the law; (2) reject any penalty offset by NSTAR with respect to the voluntary damage claim payments reimbursed to customers; (3) hold that NSTAR has failed to

meet its burden in demonstrating that it has properly calculated its service quality benchmarks; and (4) order an independent third party evaluation of the data by a utility service expert to determine its accuracy and compliance with the Department's Guidelines.

## **II. ARGUMENT**

### **A. NSTAR Has Not Demonstrated That It Has Properly Calculated The Company's Historical Benchmarks.**

NSTAR maintains that the Company has followed the procedural guidelines and directives of the Department to establish its service quality benchmarks ("SQ Benchmarks"), Co. Br., pp. 7-10, and so, it argues, the resulting substantive figures and data must be correct. NSTAR's position, however, ignores the threshold requirement that the underlying data used to calculate the SQ Benchmarks must be accurate and complete. Using inaccurate or incomplete data does not yield accurate SQ Benchmarks in compliance with the Department's Guidelines.

Although the Company has put forth SQ Benchmarks, there are numerous questions concerning the accuracy and completeness of the data relied on to calculate the benchmarks. During the evidentiary hearings, the Company was unable to explain several anomalies in its data and calculations. Tr., pp. 118-120. The Company also utilized inconsistent methodologies in compiling the data to be used in calculating the SQ Benchmarks. Tr., pp. 58-60; *see also* Tr., pp. 28-30; 58-60; 118-120 (the Company could not answer questions relating to operating areas and irregularities in the data); Tr., p. 16; Exh. AG-1-3; AG-1-5, AG-1-6; AG -1-7; AG-1-10; AG-1-11; AG-1-19 and AG-1-20 (the Company failed or otherwise refused to provide responses).

The data that the Company included in calculating the benchmarks may also not be complete. *See, e.g.,* Tr., p. 16; Exh. AG-1-3; AG-1-5, AG-1-6; AG -1-7; AG-1-10; AG-1-11; AG-1-19 and

AG-1-20; *see also* Tr., pp. 26, 30, 33, 41-42, 46, 48, 51, 56, 60, 71, 77-78, 81, 86, 97, 111-112, 119, 126-127. For example, the Company excluded relevant outage events from the benchmark calculations. Co. Br., p. 11. NSTAR now attempts to remedy this omission by attaching to its Initial Brief an “Exh. NSTAR-3 (supplement).”<sup>1</sup> Based on the record evidence, including the Company’s “supplemental” filing, the Attorney General and DOER are unable to ascertain what additional relevant items the Company excluded in calculating the SQ Benchmarks. The Company has not met its burden of proof in demonstrating the benchmark data are accurate or complete, and the Department should reject its calculations as a credible basis for quantifying penalties.

**B. NSTAR Has Not Demonstrated That It Has Properly Calculated The Service Quality Penalties And Offsets.**

The Company has not accurately calculated the SQ Benchmarks. Any penalty calculation arising from an analysis of the standard deviation or variance between the SQ Benchmarks and the service quality standards (“SQ Standards”), then, is flawed and inaccurate.<sup>2</sup> Compare Exh. NSTAR-2, Appendix; NSTAR-3; “NSTAR-3 (supplement).” The Department should reject the proposed service quality penalties (“SQ Penalties”) until it resolves the underlying data problems.

In addition, the Department should not allow the Company to reduce its SQ Penalties by the amount of its voluntary, limited, payments to some customers for reimbursement of some outage related damages. Co. Br., pp. 12-14. The Department should reject the proposed offset because:

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<sup>1</sup> The Department should preclude NSTAR from offering this evidence at this stage of the proceeding. *See* 220 C.M.R. § 1.11(8). (“No person may present additional evidence after having rested nor may any hearing be reopened after having been closed except upon motion and showing of good cause.”)

<sup>2</sup> Although NSTAR also contends that its proposed penalty offsets are properly calculated, Co. Br., pp. 10-12, the record evidence demonstrates that the Company included payments in its proposed total offset that were not the result of summer outages, fell outside of the reporting period ending August 31, 2001, and were made on claims for incidents in October and November of 2001. *See* Exh. AG-1-10; Exh. DTE-1-5.

(1) the Company does not consider the payments to be penalties; (2) the Company implemented its payment program without authority or oversight from the Department, which, in turn, resulted in errors, inconsistencies and discrepancies;<sup>3</sup> and (3) the Company's obligation to pay penalties is separate and apart from its obligation to pay damages to customers for losses incurred. Joint Br., pp. 6-9.

G.L. c. 164, § 1E(c), authorizes the Department to levy up to 2% of revenues as a penalty for failing to meet service quality standards. NSTAR has not provided sufficient, credible data to compute a defensible revenue penalty. In the absence of benchmarks capable of derivations under the appropriate guidelines, the penalty should default to the statutory standard. To adopt a position that the statutory penalty is inapposite, when NSTAR has made it difficult to apply the Guidelines credibly, only rewards noncompliance with the Department's Guidelines and minimizes service quality measures as an incentive to maintain an appropriate level of safe and reliable utility service.

**C. The Department Should Order An Independent Third Party Evaluation of The Benchmark Data.**

If the SQ plans are to help maintain service reliability, there must be reasonable assurances that the data are accurate and produced and reported in a consistent and reasonable manner. The record evidence, however, demonstrates outstanding questions about the accuracy of the benchmark calculations. The Company's "Exh. NSTAR-3 (supplement)" further changes both the benchmark calculations and the SQ Penalties. The Department should order an independent third party evaluation of the data by a utility service expert who can conduct an on-site review of the actual data,

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<sup>3</sup> As the Attorney General and DOER indicated in the Joint Initial Brief, there is no evidence that all eligible customers received notice of this program, or that NSTAR applied the program fairly or uniformly. Joint Br., p. 7-8; *see also* Tr., pp. 71-82.

data collection methods and procedures to determine compliance with the Department's Guidelines.<sup>4</sup> *See Performance Assurance Plan*, D.T.E. 99-271, pp. 31-33 (September 5, 2000) (adopting this approach for telephone performance plans).<sup>5</sup>

If the Department declines to order an independent data review, the Attorney General and DOER request that the Department re-open the evidentiary hearings to assure data accuracy for establishing benchmarks and assessing penalties.

**D. The Record Demonstrates The Need For The Department To Assess The Maximum Penalty Against the Company For Its Failure To Provide Quality and Reliable Service.**

The facts surrounding the summer outages justify the imposition of the maximum service quality penalty.<sup>6</sup> *See Joint Comments*. Such a penalty would provide a direct financial incentive to the Company to maintain service levels or exceed those levels that existed on November 1, 1997. G.L. c. 164 § 1F (7). The evidence clearly indicates that the penalties proposed by the Company have simply failed to provide it with the incentive to properly maintain and operate the distribution system, and do not provide an appropriate remedy to address the period under review, September 1, 1999 to August 31, 2001. The Department has yet to make a final determination of penalties to be assessed under the service quality provisions of the merger plan. D.T.E. 99-19, p. 107. The

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<sup>4</sup> This request is in addition to the proposal for an independent management audit of NSTAR. *Joint Comments*, pp. 7-11.

<sup>5</sup> The Attorney General has discovered that the accuracy and reliability of data is also an issue in the Department's review of other service quality plans and requests that this independent review be conducted on all electric and gas service quality plans. *See D.T.E. 01-71B*.

<sup>6</sup> The Company has scattered its service quality performance data in four separate proceedings, D.T.E. 99-19, D.T.E. 99-84, D.T.E. 01-65 and D.T.E. 01-71 A. The Department should consolidate all data, pertinent materials and testimony into this docket so that it can make a comprehensive review and disposition concerning the service provided by the Company since the merger.

Attorney General and DOER request that the Department do so in the context of their January 30 Joint Comments.

### **III. CONCLUSION**

For all of these reasons, the Attorney General and DOER request that the Department reject the Company's proposed SQ benchmarks and penalties.

RESPECTFULLY SUBMITTED,

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